

CITY OF ROCKVILLE PLANNING DIVISION
STAFF REPORT

June 17, 2004

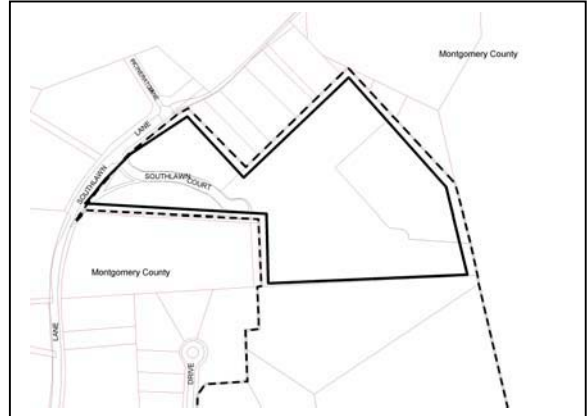
SUBJECT:

Special Exception Application SPX2004-00341 &
Special Exception Application SPX2004-00342

Applicant: Lewis Warsaw
17817 Hidden Garden Lane
Ashton, Maryland 20861

Property
Owner: Rockville Blades, LLC
Attn: Jason Robbins
7801 Norfolk Avenue
Bethesda, Maryland 20814

Counsel: David D. Freishtat, Esquire
11921 Rockville Pike
Rockville, Maryland 20852



Property
Location: 50 Southlawn Court
Rockville, Maryland 20850

Planning Commission Review Date: June 23, 2004
Board of Appeals Public Hearing Date: July 10, 2004

PREVIOUS RELATED ACTIONS:

Use Permit USE95-0542, Rinksport Rockville Limited Partnership – a proposal to construct and operate an indoor ice skating rink facility, on the subject property located in the I-1 (Service Industrial) Zone. Approved by the Chief of Planning on July 6, 1995.

Use Permit Application USE98-0582, The Ward Corporation c/o Richard Ward - a proposal to fully develop the subject property, creating five ownership lots, construct approximately 215,000 square feet of building coverage on the 24.9 acre tract of land located in the I-1 (Service Industrial) Zone. Approved by the Chief of Planning October 15, 1999.

Use Permit Amendment USA1998-0582A, E&B Enterprises LLC c/o John Burns – amend previously approved USE98-0582 to allow Ownership Lot 1-C to be developed for use and operation as an indoor sports complex, in lieu of the warehouse approved under said use permit. Approved by the Chief of Planning on March 24, 2000.

REQUEST:

In accordance with Sections 25-296 & 364 of the City of Rockville Zoning Ordinance, the applicant seeks special exception approval for the following: (a) SPX2004-00342 – a request to formally establish and operate the food concessions/ice rink diner facility located on the ground level of the ice rink as a full service restaurant, and (b) SPX2004-00341 – a request to allow the restaurant to sell beer and wine on the second level (mezzanine) area of the ice rink facility, as part of the restaurant's operation, as a sports bar.

RELEVANT ISSUES:

In reviewing the application requests, the following issue emerged and is to be addressed as is appropriate:

- Sell and consumption of alcoholic beverages is prohibited in the overall operation of the restaurant use.

STAFF RECOMMENDATION:

Approval is recommended subject to the following conditions:

1. The request to formally establish and operate the ice rink's food concessions/diner area and conversion of a portion of the mezzanine area on the second level of the ice rink facility, as part of the restaurant operations, is approved as submitted.
2. In accordance with Section 25-1 of the Zoning Ordinance "*recreational and sports facility, indoor, commercial, means a multipurpose indoor facility that does not permit the sale or consumption of alcoholic beverages on the premises, and provides for recreational facilities including, but not limited to such activities as ice hockey, figure skating, recreational ice skating, indoor soccer, etc.*" Thus, in accordance with this provision of the Ordinance, the applicant's request to sell beer and wine for consumption on the premises of the subject restaurant, which is located within the ice rink facility, cannot be approved.
3. The restaurant must be operated in substantial accordance with the information provided in the subject application request/s, i.e., food preparation and service, hours of operation, number of employees, etc., except the sale and consumption of alcoholic beverages is prohibited.
4. On-site parking must be provided in accordance with requirements of Section 25-395(28) a. &(42) of the Zoning Ordinance.

ANALYSIS:

Property Description

The subject property was annexed into the City of Rockville, from Montgomery County by the City's Mayor and Council on June 11th 1990, effective July 26, 1990. The total tract area of the overall property is 24.9 acres in size. Today, the property, formerly known as the Ward Property is improved with a mixture of uses, all of which, developed in accordance with previously approved Use Permit USE95-0542 and USE98-0582. Due to its I-1 Zoning classification, which restricts the number of lots that can be created through the subdivision process in the I-1 Zone, the overall site was developed via the ownership plat process (Ref. Section 25-313 of the Zoning Ordinance). The subject property is developed as follows: a) Ownership Lot 1-A contains the ice rink facility and associated parking, b) Ownership Lot 1-C contains the Rockville Sportsplex indoor soccer and lacrosse facility and associated parking, c) Ownership Lot 1-D contains the Airborne Express Delivery trucking operation, d) Ownership Lot 1-E contains a warehouse facility which houses a number of service industrial uses and an indoor recreational use, and e) Ownership Lot 1-F which is currently undeveloped but approved for warehouse usage.

Per approved USE95-0542, Ownership Lot 1-A is approximately 297,752 square feet (6.9 acres) in size and the ice rink building is approximately 80,000 square feet \pm in size. In accordance with approved Use Permit Amendment USA1998-0582A, the other ownership lots located on the site are as follows: a) Lot 1-C has a lot area of 161,401 square feet (3.7 acres), and contains a building facility 63,347 square feet in size, b) Lot 1-D has a lot area of 322,981 square feet (7.4 acres) and a building 64,000 square feet, c) Lot 1-E has a lot area of 189,206 square feet (4.3 acres) and a building structure 48,030 square feet in size, and e) Lot 1-F has a lot area of 117,591 square feet (2.7 acres) and approved for a warehouse 52,500 square feet in size.

When the indoor ice-skating rink was initially constructed, a minimum of 255 onsite parking spaces were required to be provided to accommodate the facility. As per the facility's approved site development plan/s, a total of 341 parking spaces were provided to serve the facility. While the subject 24.9-acre parcel is nearly built-out, with the exception of Ownership Lot 1-F, the indoor ice-skating rink facility located on Ownership Lot 1-A was the first site use developed on the overall property. The other site uses that exist today were later developed and constructed in accordance with USE1998-0582 and USA1998-0582A. Under the approved use permit plan/s all ownership lots have on-site surface parking facilities to accommodate each of their respective uses.

The overall property which includes the ice rink facility, is bounded to the north and east by the Rock Creek Regional Park, south-southeast by additional parkland and the Redgate Municipal Golf Course, and southwest-west by a mixture of heavy and light industrial land uses, i.e., construction and contractor's storage yards, auto salvage yards, a commercial fueling station, etc. The property's northern, northwestern, and eastern boundaries also form the corporate limits of the City. While the overall site is nearly developed and is covered primarily by building

structures, macadam and concrete site surface parking and travel ways, the topography of the site ranges from flat to pronounced sloping. All of the developed ownership lots, including the ice rink lot, have been landscaped in accordance with the property's previously approved landscape and forest conservation plans.



Aerial Overview of 50 Southlawn Court

Existing/Proposed Site Use

Vehicular access to the overall property is via a private 30 foot wide spine road, which was constructed at the terminus of Southlawn Court, a public street that intersects Southlawn Lane to the west of the site. Ownership Lot 1-A on which the rink is located, sits in the eastern area of the tract, abutting and overlooking county parkland to the east. The ice rink building facility is of masonry, glass, and metal frame construction. The building is approximately 79,496 square feet in size and has a building height of 23 feet. When the facility was designed it was constructed to function as a multi-recreational complex, with the ice rinks being primarily used for ice hockey, figure skating, and recreational skating.

Located on the ground level of the facility are two (2) ice skating rinks, both National Hockey League (NHL) sized ice rinks, i.e., 17,000 square feet. Also located on the main level of the facility, are locker and restroom facilities, a skate and equipment rental area, a pro shop, video arcade, administrative/office support space, and a snack bar, which is operated in association with the ice rink's food concessions/diner operation. As denoted on plans submitted with the subject application requests, the diner/food concessions facility is located in the front southwest corner of the ice rink facility. The ice rink's upper mezzanine area is currently being renovated to accommodate meeting/party rooms, office space, spectator observation areas, and a sport bar, which is intended to be operated as a component of the facility's planned restaurant operation.

The applicant (Lewis Warsaw) has been authorized by the owners of the ice rink (Rockville Blades LLC) to file the subject special exception requests SPX2004-00341 and SPX2004-00342. Under SPX2004-00342, the applicant seeks special exception approval to formally establish and operate the ice rink's food concession area/diner, located on the main level of the facility, as a full service restaurant. Based on the floor plans submitted with the request, the proposed restaurant located on the ground level of the rink, will have a total gross floor area of 2,635 square feet. Of that gross floor area approximately 775 square feet is designated as patron seating area. Under the subject request, the applicant also proposes to renovate approximately 2,000 square feet of the ice rink's mezzanine area, for restaurant usage, operating it as a sports bar. Of that floor space approximately 1,725 square feet will be patron/seating space. While, the total gross floor area of the overall restaurant would be 4,635 square feet, the size of the patron space will total 2,500 square feet.

Based on the information provided, the applicant affirms that all food will be prepared in the kitchen of the restaurant located on the ground level of the facility. All areas of the restaurant will offer the same food menu. The mezzanine sports bar restaurant component will be served by waiters/waitresses who will bring food up from the ground level facility, by way of an elevator or stairway. Off-site food delivery service will be provided upon request to nearby industrial users.

Special Exception SPX2004-00341, as filed by the applicant, seeks special approval to allow the referenced/proposed restaurant to sell beer and wine for consumption on the premises. Per, Section 25-296 of the Zoning "retail sale of alcoholic beverages for consumption on the premises

of any restaurant or delicatessen” is permitted in the I-1 Zone only by grant of special exception. Under the subject request, the applicant affirms that the sale and consumption of beer and wine will be restricted to the sports bar component of the restaurant, located on the mezzanine level of the rink. In addition to filing the subject special exception, the applicant has also filed a license application with the Board of License Commissioners for Montgomery County, Maryland, seeking a “Class H, Restaurant, On-Sale Only, Beer and Wine” license.” Based on information provided by the applicant, the Board of License Commissioners heard the request on May 6, 2004. The applicant’s counsel has confirmed that final decision by that body is expected on June 22, 2004, as to whether to grant or deny said license request. Despite these actions, the Zoning Ordinance prohibits the sale and consumption of alcoholic beverages on the premises.

On site parking requirements for the restaurant require that a minimum of 55 parking spaces be provided to accommodate the site use. Section 25-395(28)a. of the Zoning Ordinance requires one (1) parking space per 50 square feet of floor space devoted to patron use and one (1) space for each two (2) employees. Thus, the applicant’s 2,500 square feet of patron space requires a total of 50 spaces and for the restaurant’s estimated ten (10) employees, five (5) parking spaces are required. The parking requirements are calculated for the sports bar space the same as that used for the restaurant.

The restaurant’s hours of operation will be as follows: (a) First Floor Restaurant: Monday thru Thursday - 11 a.m. to 1:00 a.m., Friday - 11:00 a.m. to 2:00 a.m., Saturday - 7:00 a.m. to 2:00 a.m., and Sunday - 7:00 a.m. to 1:00 a.m. (b) Mezzanine Level/Sports Bar Area: Monday thru Friday - 5 p.m. to closing, and Saturday and Sunday – 12 noon to closing.



View From Site Parking Area

Applicable Sections of the Zoning Ordinance and Staff Analysis

In accordance with Section 25-338 of the Ordinance, the Board of Appeals shall not grant any petition for a special exception unless it finds from a preponderance of the evidence of record that:

1. The proposed use does not violate or adversely affect the Master Plan (the plan), the Zoning Ordinance or any other applicable law; and

As noted, the ice rink was the first land use developed on the overall 24.9-acre tract, then known as the Ward Property. When the ice rink facility was initially designed and built in the mid 1990s, the facility's food concession/diner was located in the same (front – southwest) area of the rink, as it is today.

The applicant's request to formally establish and operate the rinks food concessions/diner facilities and incorporate 2,000 square feet of the mezzanine area, for usage as a full service restaurant, would not violate or adversely affect the Plan, the Ordinance, or any known laws of the City. The land use designation of the subject property as assigned by the Plan is for "service industrial" land usage, which is also consistent with the I-1 (Service Industrial) zoning of the site.

In accordance with provision 25-1 of the Zoning Ordinance, which states that the sale and consumption of alcoholic beverages is not allowed on the premises of the subject and similar recreational and sports facilities, SPX2004-00341 cannot be approved as requested. While said special exception (SPX2004-00341) does not fully comply with the Ordinance, staff finds that SPX2004-00342, the request to formally establish and operate the ice rink's food concession/diner and associated facilities, as a full service restaurant, complies with applicable requirements of the Zoning Ordinance, and would not violate any applicable law/s.

By allowing said restaurant uses in the I-1 (Service Industrial) zone as a special exception land use, inference is made from the Ordinance that such uses are appropriate in these zones, if it can be demonstrated that said use will not adversely impact surrounding land uses, within the area in which they are located.

2. The proposed use at the location selected will not: a) Adversely affect the health and safety of residents in the area; or b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or c) Be detrimental to the use or development of adjacent properties or the neighborhood; or d) Change the character of the neighborhood in which the use is proposed, considering services currently required, population density, character, and number of similar uses; and

As noted, the applicant's restaurant will be operational when the ice rink is opened for business. As presented in the subject request, the restaurant is deemed to be an ancillary use of the overall indoor recreational facility. The restaurant will comprise approximately 4,635 square feet of the

79,496 gross floor area of the ice rink facility, i.e., 6 percent of the facilities total floor space. There will be no exterior renovation of the ice rink's exterior façade with the exception, of the replacement and installation of new façade signage. The building will not be expanded nor will there be an increase in floor space to accommodate the operation of the applicant restaurant. As noted, the only alteration to the facility will be the renovation of approximately 2,000 square feet of the mezzanine, which is being converted and incorporated into the applicant's restaurant operation.

The restaurant is expected to serve employees and patrons of the ice rink facility, neighboring employees working in the immediate industrial area, and/or persons visiting other facilities in immediate service industrial complex, i.e., the Rockville Sportsplex. Thus, there is no evidence that the health and safety of persons, working, living, and/or visiting within the site area will be adversely impacted by the restaurant operation. Existing site services and improvements within the area, such as roadways, water and sewer service, storm drainage, will not be overburdened by the restaurant use. Based on current land use patterns within the site area, along with the regulatory oversight of the zoning ordinance, there is no evidence that formal establishment of the ice rink's food concessions areas as a full service restaurant, will change the character of the site area, impact and/or alter the level and delivery of services within the site area.

The scale and intensity of the restaurant operation is expected to be modest when compared to overall site uses located within the immediate industrial complex. Based on the information provided, there is no evidence that the amount of vehicular traffic generated by the ice rink facility will greatly increase. Although not subject to the requests as submitted, the owner of the ice rink plans to expand the building facility in the near future, adding/constructing a third ice rink, thus requiring a traffic assessment to determine potential impact on the Southlawn Court and Lane street intersection.

A review of available City records indicates there are no current violations or complaints filed or pending against the ice rink facility and property. Staff has found no evidence indicating that the existing or proposed site use/s have been or may become a nuisance to neighboring and uses.

3. The proposed use complies with the requirements of the Zoning Ordinance that are applicable thereto.

The application is submitted in accordance with Section 25-296 of the Ordinance. As noted, SPX2004-00431 as submitted is not in full compliance with Section 25-1 of the Ordinance, which prohibits the sale and consumption of alcoholic beverages on the premises of the subject ice rink facility. Thus the request to allow the applicant restaurant to sell beer and wine from its planned sports bar component, which will be located on the mezzanine level of the ice rink, cannot be granted as requested.

However, SPX2004-00342, the applicant's request to formally establish and operate the ice rink's food concessions facilities as a full service restaurant complies with applicable requirements of the Ordinance, e.g., on-site parking requirements.

In addition to the referenced standards for granting the special exception, which the Board of Appeals must render findings in its review and consideration of the subject requests; as per Section 25-364(b) of Zoning Ordinance, the following additional findings apply to “Restaurants in the I-1 Zone:

1). That such use is necessary for the service and convenience of the employees of the industrial zone in which it is located; 2) That it is designed primarily for the service of employees in such zone; and 3) that it will not constitute a nuisance to uses in such zone or any adjacent zone because of generation of traffic, noise, odor or other factors.

The applicant restaurant is intended to serve employees and patrons of the ice rink, as well as employees working within the surrounding industrial area. The applicant affirms that the restaurant is designed primarily to accommodate the food service needs of employees both within and in close proximity to the ice rink facility, who typically drive outside of the I-1 zoned industrial site area for meals. There is ample on site parking to accommodate both patrons of the restaurant and ice rink and neighboring Rockville Sportsplex facilities.

In accordance with Section 25-364 (c) of the Ordinance, the following special development and use requirements apply to the establishment of a restaurant in the I-1 Zone: 1) Shall be secondary to the main use of any lot; 2) Shall be located within the main building; and 3) Shall not occupy more than twenty-five (25) percent of the gross floor area of the building.

Staff finds the request/s as submitted comply with these provisions of the Ordinance.

Based on all of the noted factors, staff finds suitable justification to recommend Special Exception Application SPX2004-00341 not be approved as submitted and that Special Exception SPX2004-00342 be approved subject to the conditions as referenced on page two of this staff report.

COMMUNITY NOTIFICATION PROCESS

Notification cards were sent to surrounding property owners informing them of the application request and upcoming Planning Commission review and Board of Appeals public hearing, where the request will be publicly considered. Notices were sent to 47 addresses located within the subject site area. A list of the addresses to which notices were sent is contained in the project’s application file, available for public review and inspection.

/cdc

List of Attachments

Attachment “A” – Approval Letter - USE95-0542

Attachment “B” – Approval Letter USE98-0582

Attachment “C” – Approval Letter USE1998-0582A

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Attachment "D" – Typical Menu
Exhibit "1 & 2" – Floor Plan
Exhibit "3" – Building Elevations
Exhibit "4" – Site Plan